

## **LOSS OF DIRECTORS' RESPONSIBILITY FOR TERMINATION OF EMPLOYMENT RELATIONS WITH EMPLOYEES DUE TO THE COMPANY'S BANKRUPTCY**

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### **ABSTRACT**

Limited Liability Company (PT) as an independent legal entity operates through its organs, with the board of directors having a central role in managing the company. In business practices that are full of dynamics and uncertainty, directors often face the risk of lawsuits for decisions that result in losses for the company. To protect directors who act in good faith, the business judgment rule doctrine is present as a principle that provides legal protection for directors from liability for company losses, including in the context of bankruptcy that results in termination of employment with employees. This study aims to analyze the application of the business judgment rule doctrine in Law Number 40 of 2007 concerning Limited Liability Companies, examine the differences between ultra vires actions that are beneficial and the application of the business judgment rule, and analyze the accountability of directors for termination of employee employment due to company bankruptcy. The application of the business judgment rule doctrine in Indonesia is reflected in Article 97 paragraph (5) of the Limited Liability Company Law, which provides protection for directors who have carried out their duties in good faith, with caution, without conflict of interest, and in accordance with the authority granted. This study found that ultra vires actions that benefit the company cannot be equated with the business judgment rule, because these actions still violate the limits of authority in the articles of association.

**Keywords: Business Judgement Rule Doctrine, Termination of Employment, Bankruptcy, Directors' Liability.**

### **A. Introduction**

Limited Liability Company or abbreviated as PT is a legal entity or artificial person that is able to act to carry out legal acts through its representatives, therefore the company is an independent legal subject that has rights and obligations in legal relations. Implementing all rights and obligations in legal relations of PT there are company organs consisting of general meetings of shareholders, directors and commissioners. The existence of PT as an independent legal subject does not depend on the existence of its shareholders, members of the board of directors and board of commissioners. Changes in shareholders, directors or commissioners do not affect the existence of PT as persona standi in judicio. These characteristics and characteristics, then a PT has characteristics as a capital association, in terms of liability shareholders are responsible only for what is deposited or limited liability, therefore not

responsible for losses of the company exceeding the shares that have been taken, so there is a separation of functions between shareholders and managers.

In carrying out their duties, the Board of Directors is given full rights and powers with the consequence that every action and deed carried out by the Board of Directors will be considered and treated as an action and deed of the company, as long as they act in accordance with what is stipulated in the Company's articles of association. As long as the Board of Directors does not violate the articles of association, the Company will bear all the consequences of the Board of Directors' actions. Meanwhile, if the Board of Directors' actions are detrimental to the Company or cause the Company to go bankrupt beyond the limits and authority granted to it by the articles of association, then these actions may not be recognized by the Company or become the personal responsibility of the Board of Directors.

In practice, it is common for company directors who are supposed to have the duty and authority to manage the company to be caught up in legal problems due to decisions or policies they make. This incident illustrates how a decision taken by the board of directors as a company organ is very crucial. Then, if it turns out that the decision actually brings losses to the company, it is not uncommon for the directors to be sued personally by law enforcement officers, both in the criminal and civil realms. In fact, in the business world, no party wants losses to occur. However, sometimes things that happen in the field are so dynamic and difficult to predict, so that business ideas and decisions that were originally believed to generate profits actually show the opposite results.

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>1</sup> Research methods are one of the factors of a problem that will be discussed.<sup>2</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>3</sup> The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>4</sup>

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<sup>1</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>2</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>3</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

<sup>4</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

## C. Discussion

### 1. Implementation of the Business Judgement Rule in Law Number 40 of 2007 concerning Limited Liability Companies

Business judgment as a doctrine or rule is one of the main teachings in corporate law. However, in practice and literature, these two concepts of business judgment as a doctrine and business judgment as a rule are often misunderstood, as if they have the same meaning.<sup>21</sup> The definition in Black's Law Dictionary describes the business judgment rule as the act of making business decisions without involving personal conflicts of interest, with integrity, and considering the good of the company.

Business judgment rule according to Ridwan Khairandy, is a doctrine that teaches that the company's directors are not responsible for losses arising from a decision-making action, if the action is based on good faith and caution. Directors receive legal protection without the need to obtain justification from shareholders or the courts for decisions they make in the context of company management. The application of the business judgment rule doctrine in making business decisions, the board of directors can override the GMS, board of commissioners and other institutions as long as the directors carry out their authority and duties based on the law and the company's articles of association. The director's actions that have been carried out in good faith, the best judgment, and goals that are believed to benefit the company and all its shareholders cannot be blamed.

Sutjipto explained that the board of directors has the authority, is required to take the initiative, and make plans to realize the Company's intent and objectives. These objectives then become the limits of the scope of the Company's ability to act. This causes the authority to not be limited to legal acts that are expressly stated in the Company's intent and objectives, but includes other acts, such as acts that are customary, reasonable, and appropriate. This draws on the principle that is also adopted by the board of directors to carry out and be responsible for the management of the Company, namely the business judgment rule.

### 2. Profitable Results But Based on Directors' Actions Beyond Responsibility (Ultra Vires) Can Be Equated with the Business Judgement Rule

The doctrine of exceeding authority (ultra vires) is a doctrine that has been known for quite a long time. The ultra vires doctrine considers null and void any action of a PT organ outside its authority based on the objectives of the PT contained in the articles of association. This teaching was initially known by countries that adhere to "common law". In legal science, ultra vires means an action carried out by a legal entity (PT) that is outside the objectives and

therefore outside the authority of the legal entity. The ultra vires doctrine has a background in the theory of fiction. In principle, this ultra vires doctrine is very extreme.

The term ultra vires is applied not only if the company carries out actions for which it actually has no authority, but also to actions for which it has authority, but is carried out irregularly. Even further, an action is classified as ultra vires not only if the action exceeds its express or implied authority, but also if the action is contrary to applicable regulations or contrary to public order. Where the ruler who is also the legislator also determines the applicable law and legal entity. The concession theory (consecie theory) which developed in Anglo-Saxon is in line with the theory of fiction. A legal entity always has a special and specific purpose at the time of its establishment, so that the legal entity cannot act outside its intent and purpose.

The provisions of Law Number 40 of 2007 concerning Limited Liability Companies concerning exceptions to the personal liability of members of the board of directors for losses of the company contain qualifications that illustrate that the application of the business judgment rule doctrine in Indonesia is within the concept of judicial review standards. The existence of a clear sentence in Law Number 40 of 2007 concerning Limited Liability Companies "if it can be proven", then the application of the business judgment rule must be proven in court. This is certainly different from the concept of the business judgment rule as an abstention doctrine, where if the board of directors has made a decision that meets the criteria of the business judgment rule, then he cannot be brought to court or the judge cannot re-examine the decision that has been made by the board of directors.

#### **D. Conclusion**

The business judgment rule in Law Number 40 of 2007 concerning Limited Liability Companies is reflected in Article 97 paragraph (5), which provides legal protection to directors from liability for company losses if they can prove that the loss was not due to their fault or negligence, they have carried out management in good faith and with care, have no conflict of interest, and have taken action to prevent the occurrence or continuation of such losses. The application of this doctrine is intended to protect directors who have made business decisions rationally and with care, even though the decision ultimately results in losses for the company.

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